



PO Box 8096
Reno, NV 89507

September 15, 2010

Jason King, Nevada State Engineer
NV Division of Water Resources
901 So. Stewart St. #2002
Carson City, V 89701

Dear Mr. King,

On behalf of the Toiyabe Chapter of the Sierra Club and its 5,000 plus members in Nevada and the eastern Sierra, I am writing to provide feedback on the August 19, 2010 website documents providing information on the plans for republishing and rehearing the protested applications held by the Southern Nevada Water Authority (SNWA) in Spring, Cave, Dry Lake, and Delamar Valleys. Our members strongly support sustainable water decisions which avoid and minimize impacts to existing water uses, including environmental water needs. We appreciate your moving ahead to comply with court-mandated opportunities for all citizens to file protests and participate in the state's water decision process.

The Great Basin Water Network has raised many of the issues and concerns (letter of September 7, 2010) which we also have about the interpretation of the recent Supreme Court ruling in Case No. 49718, Great Basin Water Network, et. al. v. State Engineer, et. al and the scheduling of the first of the court-mandated re-hearings.

However, before we can effectively work together on developing the most efficient, orderly and fair hearing process, we believe it is critical that two issues be resolved as soon as possible: which basins are under court mandates for re-publishing and rescheduling new protest hearings and what is the best way to handle the confusing and convoluted situation of duplicative applications and protests.

1. Which SNWA applications and basins does the Supreme Court ruling affect?: While we understand that the State Engineer "cannot state with certainty how that decision will be interpreted in all circumstances," (first paragraph of the State Engineer's general response of July 7, 2010), our belief is that the ruling clearly requires the State Engineer to re-notice SNWA's 1989 applications and reopen the protest periods. If the Supreme Court intended for its ruling to be limited to only 34 SNWA applications in 5 basins, it would have stated this explicitly.

We strongly agree with the State Engineer's July 7, 2010 statement that the publication of protest notices and subsequent scheduling of protest hearings to be staggered to limit impacts on agency workloads . Staggering hearings is also necessary to limit impacts on the resources of the applicant and protestants to fully participate in these administrative hearings.

2. Why can't the 2010 protests of SNWA's duplicative 2010 applications be applicable to the mandated re-noticing of protests for the re-hearings?: We understand that the situation of duplicative applications and protests facing the State Engineer is un-precedented. However, instead of using his authority to consolidate the duplicative applications and protests, the State Engineer's decision is not fairly and efficiently resolving this administrative nightmare. Requiring citizens to re-protest the same SNWA applications would produce absurd results. If SNWA submits a 3rd or 4th set of duplicative applications for the exact same amount of water rights in the exact same valleys, will we have to protest each set of applications to ensure that SNWA does not simply move forward with newer unprotested applications? Will there then be separate protest hearings for each set of duplicative applications? We believe it is in the State Engineer's authority to apply common sense to this convoluted situation and accept protests of identical applications for one set of hearings.

Scheduling Issues and Concerns: The rush to schedule the first hearing for four basins before the republishing of the protest notice effectively forecloses the opportunity for new protestants to have any role in the determination of hearing procedures, especially protestants from Utah who will receive no published notice of the re-protest period (according to the informational statement). In addition, since the scheduled re-protest period will not close until the end of December 2010, there will only be one month in which protestants can attempt to "confer and attempt to consolidate their cases or witnesses" in order to meet the January 28, 2011 deadline for informing the State Engineer of the number of witnesses and the time needed to put on their protest case. Lastly, the rushed schedule appears to cut short the time necessary to adequately prepare mandated inventories of the water resources in each of the four basins. We know of no legal requirement to rush to publication this fall before all the parties have had sufficient preparation time and critical issues which have been raised are resolved.

Thank you for considering our comments.

Sincerely,

Dennis Ghiglieri /s/

Dennis Ghiglieri
Toiyabe Chapter of the Sierra Club